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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 225, 226 and 235

[FNS-2016-0040]

RIN 0584-AE08

Child Nutrition Program Integrity; Extension of Comment Period

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This rule proposes to codify several provisions of the Healthy, Hunger-Free Kids Act of 2010 affecting the integrity of the Child Nutrition Programs, including the National School Lunch Program (NSLP), the Special Milk Program for Children, the School Breakfast Program, the Summer Food Service Program (SFSP), the Child and Adult Care Food Program (CACFP) and State Administrative Expense Funds. The Department is proposing to establish criteria for assessments against State agencies and program operators who jeopardize the integrity of any Child Nutrition Program; establish procedures for termination and disqualification of entities in the SFSP; modify State agency site review requirements in the CACFP; establish State liability for reimbursements incurred as a result of a State's failure to conduct timely hearings in the CACFP; establish criteria for increased State audit funding for CACFP; establish procedures to prohibit the participation of entities or individuals terminated from any of the Child Nutrition Programs; establish serious deficiency and termination procedures for unaffiliated sponsored centers in the CACFP; eliminate cost-reimbursement food

service management company contracts in the NSLP; and establish procurement training requirements for State agency and school food authority staff in the NSLP. In addition, this rulemaking would make several operational changes to improve oversight of an institution's financial management and would also include several technical corrections to the regulations. The proposed rule is intended to improve the integrity of all Child Nutrition Programs. The comment period is being extended until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, to provide additional time for interested parties to review and submit comments on this proposed rule.

DATES: The comment period for the proposed rule that was published on March 29, 2016 (81 FR 17564) has been extended from May 31, 2016 to **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. To be assured of consideration, written comments must be postmarked on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. In order to ensure proper receipt, written comments must be submitted through one of the following methods only:

- Preferred method: Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Comments should be addressed to Andrea Farmer, Chief, Community Meals Branch, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302-1594.

- **Hand Delivery or Courier:** Deliver comments to the Food and Nutrition Service, Child Nutrition Programs, 3101 Park Center Drive, Alexandria, Virginia 22302-1594, during normal business hours of 8:30 a.m. – 5:00 p.m., Monday through Friday.

Comments sent by other methods not listed above will not be able to be accepted and subsequently, not posted. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Duplicate comments are not considered. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. The Department will make the comments publicly available on the Internet via <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Karen Smith, Community Meal Programs Branch, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service at (703) 305-2590.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Executive Summary

I. Public Comment Procedures

Your written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason(s) for any change you recommend or proposal(s) you oppose. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. We invite specific comments on various aspects of the rule as described later in this preamble. We also invite comments from State agencies,

sponsors, and providers on the administrative cost of compliance with any of the provisions in the rule. Additionally, we invite comments on the potential impact of the changes in the proposed rule on Program access, particularly in areas through the country where there are a limited number of providers available to operate the Programs. Comments received after the close of the comment period (refer to DATES) will not be considered or included in the Administrative Record for the final rule.

We also invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the proposed regulations clearly stated?
- (2) Does the rule contain technical language or jargon that interferes with its clarity?
- (3) Does the format of the rule (e.g., grouping and order of sections, use of headings, and paragraphing) make it clearer or less clear?
- (4) Would the rule be easier to understand if it was divided into more (but shorter) sections?
- (5) Is the description of the rule in the preamble section entitled “Background and Discussion of the Proposed Rule” helpful in understanding the rule? How could this description be more helpful in making the rule easier to understand?

II. Executive Summary

Purpose of the Regulatory Action

This proposed rule would codify several provisions of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), Public Law 111-296, that affect the integrity of the Child Nutrition Programs, including the National School Lunch Program (NSLP), the Special Milk Program for Children (SMP), the School Breakfast Program (SBP), the Summer Food Service Program (SFSP), the

Child and Adult Care Food Program (CACFP), and State Administrative Expense Funds (SAE). In addition, this rule would incorporate policy changes resulting from several findings from recently conducted targeted management evaluations of the CACFP by the Food and Nutrition Service (FNS), and USDA Office of Inspector General audit findings, as well as other miscellaneous revisions to the regulations. The rule is intended to improve the integrity of all Child Nutrition Programs.

USDA anticipates that the provisions under this proposed rule would be implemented 90 days following publication of the final rule, with the exception of those related to CACFP audit funds and those related to assessments against State agencies and program operators. The provision granting eligible State agencies additional CACFP audit funds will be implemented upon publication of the final rule. Because States and school districts have been working diligently to implement the provisions of the Healthy, Hunger-Free Kids Act, USDA anticipates that the provision establishing criteria for assessments against State agencies and program operators would be implemented one school year following publication of the final rule to provide entities the time they need to complete successful implementation

Summary of the Major Provisions of the Regulatory Action

The major provisions addressed in this rule are:

Section 303 of the HHFKA: Fines for Violating Program Requirements — Section 303 of the HHFKA requires the Secretary to establish criteria for the imposition of fines in the Child Nutrition Programs, referred to as assessments in this proposed rule. An assessment refers to a required payment of funds from non-Federal sources. Under section 303, the Secretary or a State agency may establish an assessment against any school food authority or school administering

the Child Nutrition Programs if the Secretary or the State agency determines that the school or school food authority failed to correct severe mismanagement of any program, failed to correct repeated violations of program requirements, or disregarded a requirement of which they have been informed. Section 303 also provides the Secretary the authority to establish an assessment against any State agency if the Secretary determines the State agency has failed to correct severe mismanagement of any program, failed to correct repeated violations of program requirements, or disregarded a requirement of which they have been informed.

Section 322 of the HHFKA: SFSP Disqualification — Section 322 requires the Secretary to establish procedures for the termination and disqualification of entities participating in the SFSP, to maintain a list of entities that have been terminated or disqualified from SFSP, and to make this list available to States for use in approving or renewing service institutions' applications for SFSP participation.

Section 331(b) of the HHFKA: State Agency/ Sponsor Review Requirements in the CACFP — Section 331(b) requires the Secretary to develop for State agencies additional criteria or priorities for use in choosing institutions for review, including institutions at risk of having serious management problems and institutions conducting activities other than the CACFP.

Section 332 of the HHFKA: State Liability for Payments to Aggrieved Child Care Institutions — Section 332 requires State agencies to pay all valid claims for reimbursement, from non-Federal sources, if the required timeframes for a fair hearing are not met.

Section 335 of the HHFKA: CACFP Audit Funding — Section 335 allows the Department to increase the amount of audit funds made available to a CACFP State agency if the State agency

demonstrates it can effectively use the funds to improve Program management in accordance with criteria established by the Department.

Section 362 of the HHFKA: Disqualified Schools, Institutions, and Individuals — Section 362 makes any school, institution, service institution, facility, or individual that has been terminated from any Child Nutrition Program and who is on the CACFP or SFSP National Disqualified List ineligible for participation in or administration of any Child Nutrition Program.

Costs and Benefits

While all entities — school food authorities, schools, institutions, sponsors sites, sponsoring organizations, day care centers and State agencies — administering Child Nutrition Programs will be affected by this rulemaking, the economic effect is not expected to be significant as explained below.

The comment period for this proposed rule is extended until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to provide additional time for interested parties to review and submit comments on this proposed rule.

Dated: June 2, 2016.

Yvette S. Jackson,

Acting Administrator,

Food and Nutrition Service.

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